

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ERNIECE MOORE)	
Claimant)	
VS.)	
)	Docket Nos. 179,190 & 184,709
BEECH AIRCRAFT CORPORATION)	
Respondent)	
Self-Insured)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

On March 13, 1996 the application of the respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Shannon S. Krysl on November 13, 1995 came on for oral argument.

APPEARANCES

Claimant appeared by and through her attorney Tom E. Hammond of Wichita, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney Jeff C. Spahn of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney Scott J. Mann of Hutchinson, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

Docket No. 179,190

- (1) Whether claimant should be denied benefits beyond claimant's medical treatment under K.S.A. 44-501(c) as claimant was not disabled from employment for a period of at least one week from earning full wages per the logic of Boucher v. Peerless Products, Inc., 21 Kan. App. 2d, 977, ____ P.2d ____ (1996).
- (2) Whether claimant suffered accidental injury arising out of and in the course of her employment on the date alleged?
- (3) What, if any, is the nature and extent of claimant's injury and/or disability?

Docket No. 184,790

- (1) What, if any, is the liability of the Kansas Workers Compensation Fund?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein and, in addition, the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant alleges accidental injury on January 4, 1993 (Docket No. 179,190) when she slipped and fell either in respondent's parking lot or on the sidewalk adjacent to respondent's parking lot before coming to work. Claimant further alleges accidental injury on November 1, 1993 (Docket No. 184,709) when she fell while performing her job in the respondent's plant.

Docket No. 179,190

(1) With regard to the injury on January 4, 1993, respondent alleges claimant should be entitled to medical benefits only under K.S.A. 44-501(c) and based upon the logic set forth in Boucher, *supra*. The Appeals Board notes this issue was not presented to the Administrative Law Judge as is required by K.S.A. 1995 Supp. 44-555c(a) and it will not be considered. See also Scammahorn v. Gibraltar Savings & Loan Assn., 197 Kan. 410, 416 P.2d 771 (1966).

(2) Respondent next contends claimant's accidental injury did not arise out of and in the course of her employment as respondent disputes the location of claimant's slip and fall. The evidence is slightly contradictory in that there is some evidence in the record to

indicate claimant may have slipped and fallen on the sidewalk adjacent to respondent's parking lot rather than in the parking lot itself.

The Appeals Board finds the evidence supporting a fall on the sidewalk to be slim and not credible. The most credible evidence indicates claimant fell in respondent's parking lot while preparing to cross the street to respondent's plant. Case law supporting an award to a claimant after suffering injury on a respondent's premise is abundant in Kansas and will not be recited herein. Suffice to say, claimant's injury suffered in respondent's parking lot, an area under the exclusive control of the respondent, where claimant was required to park her vehicle, is part of the respondent's premises. Injuries suffered on respondent's premises constitute injuries arising out of and in the course of claimant's employment and are compensable.

(3) With regard to the nature and extent of claimant's injury and/or disability, the Appeals Board finds claimant is entitled to a functional impairment only having voluntarily removed herself from employment at a time when respondent was ready and willing to provide claimant accommodated employment within her medical restrictions. Claimant chose instead to voluntarily retire and, as such, work disability would be inappropriate. The medical reports and the testimony of Dr. Bernard T. Poole show claimant to have suffered a distinct injury on January 4, 1993 which resulted in a 29 percent whole body functional impairment. Dr. Poole felt the injury of November 1, 1993 resulted in a temporary exacerbation of claimant's symptoms only. The Appeals Board finds the medical evidence of Dr. Poole to be more convincing than that of Dr. Lawrence Blaty and adopts Dr. Poole's analysis and functional impairment as its own in granting claimant a 29 percent whole body functional impairment as a result of the injury suffered on January 4, 1993.

Docket No. 184,709

With regard to the issue of Fund liability in Docket No. 184,709, the Appeals Board finds the analysis set forth in the Award of the Administrative Law Judge in denying Fund liability is both accurate and complete and the Appeals Board adopts same as its own as if fully set forth herein. Therefore, liability against the Kansas Workers Compensation Fund for the temporary injury suffered by claimant on November 1, 1993 in Docket No. 184,709 is denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that an award of compensation is made in accordance with the above findings in favor of the claimant, Erniece Moore, and against the respondent, Beech Aircraft Corporation, a qualified self-insured, in Docket No. 179,190 for an accidental injury occurring on January 4, 1993. Claimant is entitled to 415 weeks permanent partial general body disability at the rate of \$108.51 per week in the amount of \$45,031.65 for a 29% permanent partial general body disability, making a total award of \$45,031.65.

As of March 20, 1996, claimant would be entitled to 167.29 weeks permanent partial general body disability at the rate of \$108.51 per week in the sum of \$18,152.64, for a total due and owing of \$18,152.64 which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance in the amount of \$26,879.01 shall be paid at the rate of \$108.51 per week until fully paid or until further order of the Director.

Claimant is further entitled to unauthorized medical up to the statutory maximum upon presentation of an itemized statement verifying same.

Future medical is awarded upon proper application to and approval by the Director of Workers Compensation.

Docket No. 184,709

WHEREFORE, it is the finding, decision and order of the Appeals Board that an award of compensation to claimant for permanent impairment of function for injuries alleged on November 1, 1993 is hereby denied in accordance with the above findings.

Claimant is entitled to 13.43 weeks temporary total disability compensation at the rate of \$313 for a total of \$4,203.59, and medical of \$2,365.62.

Claimant is entitled to unauthorized medical up to the statutory maximum.

Future medical will be awarded upon proper application to and approval by the Director of workers compensation.

Docket Nos. 179,190 & 184,709

Claimant's attorney fee contract is approved insofar as it is not in contravention to K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Deposition Services	
Transcript of regular hearing	\$244.30
Barber & Associates	
Deposition of Bernard T. Poole, M.D.	\$222.50
Deposition of Raymond Alphonse Urbi Lagpacan	Unknown
Deposition of John Kelly	Unknown
Deposition of Lawrence Blaty, M.D	\$197.80

IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Tom E. Hammond, Wichita, KS
Jeff C. Spahn, Wichita, KS
Scott J. Mann, Hutchinson, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director